



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2003

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2003-8618

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191734.

The El Paso Police Department (the "department") received two requests for information relating to two named individuals and specified time intervals. You inform us that the department will release some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.¹

We first note that chapter 552 of the Government Code does not require the department to release information that did not exist when it received these requests or to create responsive information.² We have marked information that is dated after the date of the department's receipt of these requests. This post-dated information is not responsive to these requests. This decision does not address the non-responsive information, and that information need not be released.

¹It is not clear whether you have submitted all of the information that the department seeks to withhold or a sample of that information. See Gov't Code § 552.301(e)(1)(D). In the event that the submitted information is a sample of the information at issue, this letter ruling assumes that the submitted information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See also Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information with regard to a particular individual, the compiled information takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). Each of the present requests is for "all reports" regarding a named individual. Thus, these requests for unspecified law enforcement records implicate the privacy rights of the named individuals. Therefore, to the extent that the department maintains any information that relates to either of the named individuals as a criminal suspect, arrested person, or defendant, any such information must be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(2). Section 552.130(a)(2) is applicable to information that relates to a Texas automobile registration or vehicle identification number. We have marked a vehicle identification number that the department must withhold under section 552.130. We also have marked license plate information that the department must withhold under section 552.130 if the marked information relates to a Texas automobile registration.

In summary: (1) to the extent that the department maintains any information that relates to either of the named individuals as a criminal suspect, arrested person, or defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with *Reporters Committee*; and (2) the department must withhold the information that is excepted from disclosure under section 552.130. The rest of the responsive information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

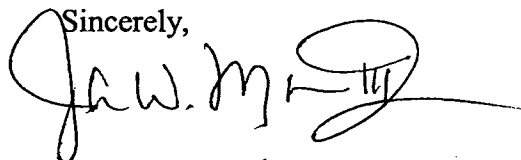
benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 191734

Enc: Submitted documents

c: Mr. Curtis J. Flynn
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(w/o enclosures)